

ESTATE OF ANDREW JACKSON MARSH

IBIA 75-38

Decided July 29, 1975

Appeal from an Order Denying Petition for Rehearing.

Affirmed.

1. Indian Probate: Rehearing: Pleading, Timely Filing

A petition for rehearing filed with an Examiner of Inheritance was properly denied by the Examiner where the petition was not filed within the period prescribed by the applicable regulations.

2. Indian Probate: Rehearing: Pleading, Timely Filing

Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after entry of the original order, the Hearing Examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits.

APPEARANCES: George C. Butler of Butler and Pickett, Richland, Washington, for Warren and Frank Ling, appellants, and John A. Wilkins of Horton, Wilkins and Faurholt, Kennewick, Washington, for Mildred Ling Ross, appellee.

Warren and Frank Ling, hereinafter referred to as appellants, through their attorney, George C. Butler, have appealed to this Board from an Order Denying Petition for Rehearing issued by Administrative Law Judge William E. Hammett on October 30, 1974.

The record indicates that an Order Disapproving Will and Order Determining Heirs in the estate herein was issued and mailed on

August 22, 1974. Thereafter, on October 24, 1974, a petition for rehearing was filed with the Administrative Law Judge.

In support of their petition for rehearing, the appellants alleged:

(1) in that said decision did not adequately take into account the testimony of the witness D. A. Knudson that the will was in fact properly witnessed; gave undue weight to the testimony of the witness Emil Schneider that he did not know what document it was that he witnessed; and that by reason of the foregoing the decision was contrary to the evidence; and

(2) in that said decision was contrary to the law in that the Administrative Judge gave undue weight to what he considered the probabilities to be with regard to the testator's selection of his beneficiaries, and no weight at all to the presumption in favor of testacy and of the will.

The Judge on October 30, 1974, without considering the merits of the appellants' allegations set forth above, denied the petition for the reason it was not timely filed in compliance with the provisions of 43 CFR 4.241.

Clearly, the petition for rehearing was not timely filed, having been received by the Administrative Law Judge on October 24, 1974. Accordingly, the Judge properly denied the same.

[1] A Petition for Rehearing filed with an Examiner of Inheritance was properly denied by the Examiner where the petition was not filed within the period prescribed by the regulations. Estate of Agatha Quiltairre (Qualtier), IA-114 (January 11, 1954).

Moreover, the Judge acted properly in not considering the merits of the issues raised in the petition for rehearing which was not timely filed.

[2] Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after entry of the original order, the Hearing Examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits. Estate of Lucy Hope Deepwater, 1 IBIA 201, 78 I.D. 355 (1971).

In view of the reasons hereinabove set forth, the Order Denying Petition for Rehearing issued on October 30, 1974, by Administrative Law Judge Hammett, must be affirmed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Order of the Administrative Law Judge issued October 30, 1974, in the estate herein be, and the same is hereby AFFIRMED.

This decision is final for the Department.

Alexander H. Wilson
Administrative Judge

I concur:

Mitchell J. Sabagh
Administrative Judge